IN THE COURT OF APPEALS OF IOWA

No. 0-942 / 10-0047
Filed July 13, 2011

TOM and JOANN BELLING, CRAIG and SHIRLEY BUTTERFIELD, GARY and MARY CURNES, GREG NEPSTAD and MARY SLOAN, RICK and PAM RILEY, LYNNETTE THORNTON, and AL and JENNY WILLE,
Plaintiffs-Appellees,

vs.

CITY OF URBANDALE, IOWA,
Defendant-Appellant.

Appeal from the Iowa District Court for Dallas County, Gary G. Kimes, Judge.

The City of Urbandale appeals the district court's decision reducing special assessments against property owners for a public improvement. **AFFIRMED IN PART; REVERSED IN PART.**

Ivan T. Webber of Ahlers & Cooney, P.C., Des Moines, for appellant.

Deborah M. Tharnish of Davis, Brown, Koehn, Shors & Roberts, P.C., Des Moines, and Joseph A. Happe of Huber, Book, Cortese, Happe & Lanz, P.L.C., West Des Moines, for appellees.

Amy S. Beattie of Brick Gentry, P.C., West Des Moines, for amici curiae American Council of Engineering Companies of Iowa and Iowa Engineering Society.

Terry Timmins, Des Moines, and Amy S. Beattie of Brick Gentry, P.C., West Des Moines, for amicus curiae Iowa League of Cities.

Heard by Sackett, C.J., Potterfield, J., and Miller, S.J.*

*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2011).

POTTERFIELD, J.

Several property owners brought an action against the City of Urbandale challenging the amount of special assessments levied against them for the paving of a street abutting their property and the addition of sidewalks. The district court reduced the roadway assessment by seventy-five percent and reduced the sidewalk assessment by fifty percent. The City appeals.

I. Background Facts and Proceedings

Plaintiffs own residential acreages along 156th Street in Urbandale. Their lots range in size from .95 acres to 8 acres. The area has experienced development over the past ten years, including the addition of a nearby elementary school. In response to the growth in the area, the City initiated a project to replace a section of 156th Street and to build new sidewalks.

The roadway portion of the 156th Street project consisted of replacing the existing two-lane, twenty-four-foot wide sealcoated asphalt road with a four-lane divided parkway made up of a twenty-eight-foot wide green median between two twenty-six-foot wide sections of road. The sidewalk portion of the project added a four-foot wide sidewalk on the east side of the street and an eight-foot wide multi-use path on the west.

The only construction cost included in the roadway assessment was the cost of paving a thirty-one foot wide street. The assessment did not include other construction costs, such as grading, subgrade preparation, storm sewers, water mains, sanitary sewers, or street lights. The special assessment for the new road was spread among the property owners by the use of a modified Flint

formula.[1] The City also assessed adjacent property owners for the full cost of providing a sidewalk four feet wide. The total costs of the project were $5,991,715.77. The city assessed $1,337,726.81, approximately twenty-two percent of this cost.[2] The projected final assessments levied against plaintiffs were as follows:

Plaintiff	Sidewalk Assessment	Roadway Assessment	Total Assessment
Butterfield	$5120.19	$29,724.15	$34,844.34
Curnes	$14,859.04	$89,389.60	$104,248.64
Nepstad-Sloan	$4665.32	$28,065.81	$32,731.13
Riley	$4484.54	$26,978.26	$31,462.80
Thornton	$3347.37	$15,102.91	$18,450.28
Wille	$1492.90	$13,336.87	$14,829.77

The plaintiffs brought an action against the City, contending the assessments exceeded the special benefits they received from the project. The plaintiffs testified at trial that they received very little benefit from the project. Each plaintiff also testified about numerous negative impacts of the project, including: increased noise, trash, traffic, and maintenance (primarily snow removal and mowing); decreased safety, privacy, and accessibility;[3] and potential liability. The plaintiffs testified this project produced a great public benefit for the surrounding neighborhoods and nearby school but provided very little special benefit to their properties.

[1] The Flint formula "focuse[s] on the frontage size and depth of the abutting property, and assign[s] 'benefit points' for each tract." *Thorson Revocable Estate Trust v. City of West Des Moines*, 531 N.W.2d 647, 650 (Iowa Ct. App. 1995).

[2] At the time of trial, the City Council had not yet approved these assessments.

[3] The new road did not include cutouts in the median for each plaintiff's driveway, so some of the plaintiffs no longer had the ability to turn either direction when entering 156th Street from their driveways.

The plaintiffs presented the expert testimony of Harold Smith, a former engineer for the City of Des Moines. Smith testified the City's use of a modified version of the Flint formula in spreading assessments, referred to as the Urbandale Curve, was improper due to the irregular topographical features, size, and shape of the properties involved. Smith criticized the strictly mathematical approach of the formula for failing to properly account for special and general benefits. He stated bare land does not benefit unless it can be subdivided in some way.[4] Smith further testified the City's application of the Urbandale Curve to the Curnes, Nepstad, and Riley properties resulted in the same assessment as if the City had utilized the front-foot method, a method this court has previously determined is "fundamentally flawed." *Graytowne Apartments v. City of Coralville*, No. 01-0172 (Iowa Ct. App. May 31, 2002). Smith opined that owners of large lots, like the plaintiffs, received no more or less special benefit than people who lived on smaller lots and incurred smaller assessments.[5] Smith concluded that no roadway assessment should exceed $10,000. Smith also acknowledged there was some special benefit of a sidewalk but suggested the sidewalk assessments should be reduced by fifty percent.

The City presented evidence that the Flint formula has for decades been the preferred method of spreading assessments among property owners in Iowa.

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[4] The Curneses had received permission to subdivide their property before this project began, but plaintiff Gary Curnes testified such development was cost prohibitive. The other plaintiffs testified their properties could not be subdivided. The district court found each of the properties was at its highest and best use. One of the City's witnesses, however, testified that at least three of the properties could be subdivided.

[5] Smith identified and evaluated fifteen special benefits: noise reduction, dust reduction, increased police and fire protection, better snow and ice removal, improved access, improved drainage, ditch removal, improved safety, high life expectancy of roadway, street lighting, lower maintenance costs, pedestrian access, increased market value, beautification, and increased traffic capacity.

Paul Dekker, the Urbandale Director of Community Development, testified as to the benefits of the paving, including increased property value for the plaintiffs in "at least the amount of the assessment." David McKay, the Urbandale City Engineer, testified the assessments were properly spread and did not exceed the special benefits conferred upon the property owners. He testified the City used a modified version of the Flint formula, which was an accepted engineering practice. Robert Veenstra, an engineer who reviewed the assessments in this case, found nothing improper in actions taken by the City. He testified that in his opinion, the assessments did not exceed the value of the special benefits. He disagreed with Smith's assertion that the City's use of the Urbandale Curve amounted to a front-foot method.

The district court concluded the assessments were excessive and reduced them, finding the plaintiffs had proved the assessments exceeded the special benefit to their properties. The court reduced the roadway assessments by seventy-five percent and the sidewalk assessments by fifty percent. The district court also provided, "Each assessment shall be further reduced by 10% if paid in a lump sum within 90 days of the exhaustion of all appeals." The City appeals.

II. Scope and Standard of Review

> Our review is de novo. We will give weight to, but we are not bound by, the district court's findings. On appeal, as in the district court, the burden is on the plaintiffs to show that the special assessments were excessive. Once the city has properly ordered a special improvement . . . there is a presumption of necessity and a presumption, too, that some benefit results to the assessed property owners. Further, there is a presumption that the assessments are correct and do not exceed the special benefit received from the improvement. It is appropriate to consider future uses and expectations as well as [the] present use to which the property is put. Unfortunately, mathematical and analytical

> certainty is usually impossible in these cases, and thus, we must rely on approximations to determine the correct amount of the assessment.

Gray v. City of Indianola, 797 N.W.2d 112, 117 (Iowa 2011) (internal citations and quotations omitted).

III. Roadway Assessments

Iowa Code section 384.61 (2007) provides: "The total cost of a public improvement . . . must be assessed against all lots within the assessment district in accordance with the special benefits conferred upon the property, and not in excess of such benefits."

In levying this special assessment, the City had to determine what part of the project bestowed a special benefit on land within the assessment district. The City then had to spread the costs of that part of the project among the benefitted land. Plaintiffs contended, and the district court agreed, that the special assessments were in excess of the special benefits conferred upon their land by the roadway project. Plaintiffs also contended the City's reliance on the Urbandale Curve failed to consider individualized relevant factors and resulted in an arbitrary assessment. The district court agreed, finding "[t]he City's use of a time-honored formula in each and every situation is contrary to the case law."

A. Special Benefits

We conclude the City overestimated the portion of the project that bestowed a special benefit on the surrounding tracts of land.

> [S]treet paving projects usually confer both general and special benefits, and the abutting property owners are not required to pay for the general benefits accruing to the community at large. The finished street is available for all in the community to use; and all, including the abutting land owners, contribute to the costs through

> general taxation. The abutting property owners, however, obtain additional benefits for which they must separately pay. It is these benefits which we must extract and determine.

Thorson Revocable Estate Trust v. City of West Des Moines, 531 N.W.2d 647, 650 (Iowa 1995) (citations omitted). The following factors are useful in delineating between special and general benefits:

> the present and future use of the abutting property, the increase in the market value occasioned by the improvement, the size and shape of the property, the proximity of the property to the improvement, the amount of property fronting the improvement, the needs of the property owners served by the improvement, and the primary purpose behind the improvement.

Gray, 797 N.W.2d at 120.

We will consider these factors in order. First, we agree with the district court's findings that each of the properties was at its best use. Second, the record contains no evidence that the improvement resulted in an increased market value for any of the properties. Plaintiff Richard Riley testified he had obtained two appraisals of his property, which showed a decrease in value by $59,000 and $75,000. Third, the parcels at issue varied in size and shape, but all parcels were along 156th Street and were fairly large in size. Fourth, unlike in *Gray*, plaintiffs' land here was not on a gravel road before the paving project; thus, this project served fewer needs of the property owners than did the paving project in *Gray.* In examining the categories of special benefits identified by Smith, the record shows that because the existing road was sealcoated asphalt, the paving project had a minimal effect on noise, dust, and maintenance costs. Further, plaintiffs testified the paving project reduced access. However, the project did improve the aesthetic value and condition of the road, including its life

expectancy, allowing for better snow and ice removal and increased police and fire protection. Finally, it is clear the primary purpose behind the improvement was to afford a general benefit the public. The new road was considered an arterial road and was designed to handle heavy traffic from the community as a whole. Smith testified the new road was a "major arterial design pavement" that was equipped to handle in excess of 10,000 cars per day, where a small residential street would typically carry less than 2000 cars per day. After considering these factors, we conclude the paving project primarily produced general benefits.

We acknowledge the City did not assess the full cost of the project against the properties in the assessment district. However, we conclude that even after these reductions, the assessments still exceeded the special benefits conferred on the properties for reasons further explained below.

B. Urbandale Curve

We find the use of the Urbandale Curve is consistent with case law.

> [N]o plat and schedule of special assessments could, as a matter of practical exercise of the function, be prepared without the use of some more or less arbitrary rule for this preliminary and tentative distribution of the cost of the improvement upon the property liable to assessment.

Id. The use of the Urbandale Curve as a tool in spreading assessments was proper. However, after spreading the special assessment, the City should have examined each affected parcel and its particular features to determine whether the assessment exceeded the special benefits conferred on the land. "Expert testimony and accepted formulas can be useful in determining actual value, as long as all relevant factors are considered. On the other hand, a practical

overview of all the surrounding circumstances must be considered." *Thorson*, 531 N.W.2d at 650. "The enterprise of quantifying and allocating special benefits conferred on affected properties is not an exact science." *Gray*, 797 N.W.2d at 120. The City's heavy reliance on the Urbandale Curve as an exact science to spread the assessments failed to account for all relevant factors in this case.

The City admits in its brief that after spreading the assessments, the City had to "determine if for some reason any of the assessments thus objectively calculated cannot be sustained based on the unique characteristics of any lot." We conclude the City's failure to alter its assessments based on each parcel's unique characteristics resulted in excessive assessments. For example, McKay testified that the Curneses, who own a single-family residence abutting the improvement, were assessed the same amount as a nearby townhome/condominium development. Certainly, the project conferred more benefits on an entire townhome/condominium development than it did on a single-family residence. While some parcels, such as the Curnes lot, may have a large amount of property fronting the road, the majority of that property is undeveloped bare land. The potential special benefits identified by the parties confer very little, if any, benefit on bare land. We agree with plaintiffs that the City's strict adherence to the Urbandale Curve in spreading the assessments produced illogical results. While we find mathematical formulas, such as the Urbandale Curve, are useful tools in spreading assessments, the City must still determine that the resulting assessments do not exceed special benefits conferred on each parcel of land.

Further, we find this case to be distinguishable from *Gray*, where the supreme court reversed the district court's reduction of roadway assessments. *Id.* In *Gray*, the city presented evidence that although it relied in part on a formula, assessments were "adjusted for certain lots at the direction of the city council." *Id.* at 115-16. Further, in *Gray*, the city council members "inspected the properties and met with the owners to evaluate the special benefits received by the properties." *Id.* at 116. Such adjustments were not made in this case, as is evidenced by the City's argument on appeal that it was correct not to make adjustments to the assessments produced by the City's formula. Further, plaintiffs' properties cannot be described as "nearly uniform," as were the properties in *Gray*. *Id.* at 115.

We conclude the City miscalculated the amount of special benefits produced by the road project and failed to consider the particular features of each individual property, which resulted in assessments that exceeded the special benefits conferred on each property. We have reviewed each of the challenged assessments, and we find the district court properly reduced each roadway assessment by seventy-five percent.

IV. Sidewalk/Path Assessments

As with the roadway assessments, the special assessment levied against plaintiffs for the installation of a sidewalk must not exceed the special benefit conferred upon the property. *See id.* As in *Gray*, the property owners in this case asserted they derived little benefit from the installation of sidewalks and suffered harm because of increased maintenance and liability. Smith acknowledged the sidewalk conferred some special benefits on the plaintiffs,

including enhanced aesthetic value, but he recommended the sidewalk assessment be reduced by fifty percent.

The City's experts acknowledged that the sidewalk and multi-use path provided a general benefit to the public. They testified that the sidewalk and path were used by residents in the neighboring developments and that the sidewalk led to a nearby school.

We conclude the plaintiffs have received special benefits from the installation of the sidewalk. However, we agree with the district court that assessing the entire cost of a four-foot wide sidewalk to plaintiffs would exceed the benefit conferred upon the adjacent properties. We affirm that portion of the district court's judgment reducing the sidewalk assessments by fifty percent.

V. Reduction for Lump Sum Payment

The City asserts the district court did not have authority to offer a ten percent reduction for assessments paid in a lump sum within ninety days of the exhaustion of all appeals. We agree. The method of payment of assessments is set out by Iowa Code section 384.65. The plaintiffs may appeal from an assessment, but their appeal is from the amount of the assessment only, not from the method and manner of payment. *See* Iowa Code § 384.66(2). We reverse that part of the district court's ruling providing for a ten percent reduction of the assessments if paid within ninety days of the exhaustion of all appeals.

AFFIRMED IN PART; REVERSED IN PART.